

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT, E.D.N.Y.
★ OCT 12 2005 ★

BROOKLYN OFFICE

BARBARA SCHWAB et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

PHILIP MORRIS USA, INC. et al.,

Defendants.

No. CV 04-1945 (JBW)

MEMORANDUM AND ORDER ON
MOTION TO DISMISS CLAIMS RE
RISKS OF LIGHTS BASED ON
MUTAGENICITY OR TOXIC
CONSTITUENTS

JACK B. WEINSTEIN, Senior District Judge:

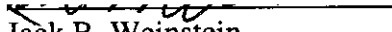
Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants move for partial summary judgment dismissing plaintiffs' claims concerning the health risks of "light" cigarettes based on mutagenicity or toxic constituents.

It is argued by defendants that no expert report of plaintiffs or any other evidence supports these claims. Even were this true, discovery is not complete and the admissibility of a number of plaintiffs' expert reports have not been considered by the court. *See* Mem. & Order of Aug. 31, 2005 (Docket No. 712) (explaining why eleven proffered plaintiffs' expert reports would not be considered at the September 12, 2005 hearing).

This motion is premature. The defendants' contentions on this issue will be considered with the certification motion and general motion to dismiss upon completion of discovery.

The motion is denied.

SO ORDERED.


Jack B. Weinstein

Dated: September 27, 2005
Brooklyn, New York